APR 17 1953
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 725

CHARLES SEDLACEK,

Petitioner,

vs.

HERBERT H. HANN, WARDEN

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEBRASKA AND BRIEF IN SUPPORT THEREOF.

CHARLES SEDLACEK,
Petitioner Pro Se.

INDEX

Subject Index

	Page
Statement of the case	2
Basis of jurisdiction	3
Questions involved	4
Reasons relied on for allowance of the writ	5
Argument	6

Cases Cited

Ex Parte Berman, 14 Fed. Supp. 716	5
Darr v. Buford, 339 U. S. 200	5
In re Application of Dunn, 150 Neb. 669	5
Frank v. Mangum, 237 U. S. 309	5
House v. Mayo, 324 U. S. 42	5
Marino v. Regan, 68 S. Ct. 240	5
Mooney v. Holohan, 294 U. S. 103	5
Moore v. Dempsey, 261 U. S. 86	5
Smith v. O'Grady, 312 U. S. 329	5

Constitution Cited

14th Amendment to U. S. Constitution	3, 8
Section 9, Art. I, U. S. Constitution	3, 4

In The

Supreme Court of the United States

April Term, 1953

——::——

No. ————

——::——

CHARLES SEDLACEK, PETITIONER,

V.

THE UNITED STATES OF AMERICA, RESPONDENT.

——::——

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEBRASKA, AND BRIEF IN SUPPORT THEREOF.

——::——

CHARLES SEDLACEK,
Per Se.

——::——

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Charles Sedlacek, respectfully prays that a writ of certiorari issue to review a decision of the Supreme Court of the State of Nebraska rendered on the 17th day of January, 1953, at Lincoln, Nebraska, affirming the refusal in the District Court of Lancaster County, Nebraska, to grant a writ of habeas corpus to your petitioner, and overruling a motion of your petitioner for a rehearing.

STATEMENT OF THE CASE.

Petitioner, on July 28, 1952, filed his petition with the District Court of Lancaster County, Nebraska, asking that a writ of habeas corpus be granted directing Herbert H. Hann, the warden of the penitentiary of the State of Nebraska, located in Lancaster County, Nebraska, asking that he, the petitioner, be discharged and restored to his liberty, and further asking that the petitioner be permitted to give bail pending the trial of the case (Original Transcript, p. 6).

On the 28th day of July, 1952, District Judge Harry A. Spencer ordered that a writ of habeas corpus issue out of and under the seal of the District Court of Lancaster County, Nebraska, commanding Herbert H. Hann, the warden of the Nebraska State Penitentiary, to have the body of the said Charles Sedlacek before the court in Lancaster County, Nebraska, on the 5th day of August, 1952 (Original Transcript, p. 10).

A writ of habeas corpus then issued on July 28, 1952 (Original Transcript, p. 11).

On August 1, 1952, Assistant Attorney General, Clarence A. H. Meyer signed a motion to quash the writ (Original Transcript, p. 12); then on the 15th day of August, 1952, John L. Polk, District Judge of Lancaster County, Nebraska, ordered the quashing and dissolving of the writ issued (Original Transcript, p. 13). Then on the 13th day of August, 1952, Charles Sedlacek, the plaintiff, gave notice of appeal from the order sustaining the motion to quash and also gave notice of appeal from the order refusing to fix bail pending the appeal to the Supreme Court of the State of Nebraska (Original Transcript, p. 14).

(Original Transcript, p. 15). Then on the 17th day of September, 1952, plaintiff filed his brief with the Supreme Court of Nebraska (Original Transcript, pp. 16-17). On the 4th day of December, 1952, the case of Sedlacek v. Hann, No. 33283, in the Supreme Court of Nebraska, was argued and submitted to the court (Original Transcript, p. 20). Then on December 19, 1952, the Supreme Court of Nebraska ordered that the judgment of the District Court of Lancaster County, Nebraska, be affirmed (Original Transcript, p. 21). And on that same day, December 19, 1952, the Supreme Court of Nebraska filed its opinion, making no mention of the bail requested by the plaintiff, and holding that petitioner did not state facts sufficient to justify the allowance of a writ, and that the statements of petitioner as reasons for allowing the writ were conclusions (Original Transcript, pp. 23-31, inclusive). Petitioner filed a motion for rehearing on the 6th of January, 1953 (Original Transcript, p. 33). On January 17, 1953, denied the motion for rehearing (Original Transcript, p. 34). The clerk of the Supreme Court of the State of Nebraska certified a complete transcript of all the record in the case of Sedlacek v. Hann, No. 33283, and also the opinion of the Supreme Court of Nebraska rendered therein (Original Transript p. 37).

BASIS OF JURISDICTION.

I.

The Federal Constitutional issues are properly preserved. This case presents Constitutional issues under the 14th Amendment to the Constitution of the United States, and Section 9 of Article I of the Constitution of the United States. Article 14 provides:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citzens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

And Section 9 of Article I provides:

"The privilege of the writ of habeas corpus shall not be suspended * * *."

QUESTIONS PRESENTED.

I.

The first question presented to this court refers to the violation of constitutional rights of the accused under the 14th Amendment, as guaranteed by the due process clause. Does this court have authority to grant the petitioner relief by way of habeas corpus if in fact, as alleged, his conviction and consequent imprisonment was really in violation of the 14th Amendment to the Constitution?

II.

If petitioner was insane at the time he was sentenced to prison, did the district court have the right to sentence him to prison in the face of the law of the State of Nebraska which provides that a person convicted of crime shall not be sentenced to imprisonment if that person becomes insane after trial and prior to sentence.

III.

Can a person convicted of crime in the lower court, that is, the District Court of the State of Nebraska, be

deprived of his legal right to appeal to a higher court by destruction of the records and the evidence through the negligence of the authorities of the state in which he was convicted.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The discretionary power of this court to grant a writ of certiorari is invoked on the following grounds:

1. This court has authority to grant the petitioner relief by way of habeas corpus if, in fact, as alleged, his conviction and consequent imprisonment was really in violation of the 14th Amendment to the Constitution.

Ex Parte Berman, 14 Fed. Supp. 716.

2. Because the state courts of Nebraska must afford petitioner a full and fair adjudication of Federal questions raised.

Frank v. *Mangum*, 237 U. S. 309.
Moore v. *Dempsey*, 261 U. S. 86.
Mooney v. *Holohan*, 294 U. S. 103.
House v. *Mayo*, 324 U. S. 42.
Marino v. *Regan*, 68 S. Ct. 240.
Darr. v, *Buford*, 339 U. S. 200.
Smith v, *O'Grady*, 312 U. S. 329.

3. If appellant, in a petition for writ of habeas corpus sets forth facts which, if true, would entitle him to discharge, then the writ is as a matter of right, and relator should be produced and a hearing held thereon to determine questions of fact presented.

In re Application of Dunn, 150 Neb. 669.

4. Because a motion to quash, as pleaded by the State of Nebraska in this case, admits all relevant facts well pleaded in petitioner's petition.

ARGUMENT.

In sustaining the motion to quash the court ignored the constitutional rights of the plaintiff and refused to consider the rights granted to plaintiff under the state law. The plaintiff was sentenced while insane and it is admitted in the pleadings and it will be clearly established upon a hearing, that plaintiff became insane after the trial of the case and before he was sentenced. Plaintiff was adjudged insane by the Insanity Commission of the State of Nebraska after his arrival at the state penitentiary, and as stated in his petition, the penitentiary medical board found the plaintiff quiet and cooperative, although insane. It is admitted in the motion to quash by the State of Nebraska, that the District Court of Saline County was biased and prejudiced against the plaintiff. He had already sat on another trial of the plaintiff for burglary in the county where the prospective jurors were well acquainted with the first trial and were biased and prejudiced on that account. The trial judge went so far as to commit the plaintiff to jail while he was under trial on the second case, and thereby arousing the community to an increased state of prejudice and bias against the plaintiff.

It is impossible to obtain the record in order to appeal for the reason that the court reporter in charge of the records and the exhibits has permitted them to be destroyed by termites that invaded the storage space where the records and exhibits were stored.

It will be established that among the exhibits there was a small sack of chicken feed upon which the termites apparently fed after the exhibits had been stored by the court reporter.

Upon the hearing requested by plaintiff, it will be definitely established that the plaintiff is a farmer approximately fifty years of age, married for more than thirty years and living with a devoted wife. That he is now serving time in the state penitentiary at Lincoln for the crime of burglary, the burglary consisting of an attempt to prove his carrying away a sack of chicken feed which has since been destroyed through the negligence of the court reporter, so that the plaintiff is unable, on account of this destruction, together with the destruction of the record, to perfect his appeal. It will be established that plaintiff has never committed a crime of violence in his entire life and never has been charged with such an offense. He has been convicted twice for burglary, each time for taking some, or attempting to take some shall item, the first burglary charge was a conviction not for taking anything, but being inside of a building where they claimed he would have taken something, and the second time was for taking a small amount of chicken feed valued at less than a dollar. It will be further established without any doubt that after the trial of the chicken feed case, the plaintiff became insane; that he was declared insane by the Insanity Commission of the State of Nebraska shortly after he was sentenced; that it was impossible to establish his insanity and prevent the district court from sentencing him at the time.

Society has done this plaintiff a great injustice. When he needed medical help they put him in prison, and

now he is being confined there and denied the rights that have been guaranteed to him by the Constitution, by the 14th Amendment, and by the statutes of the State of Nebraska. He should have his day in court where he can submit the testimony at hand, and where he will establish the allegations of his petition for a writ of heabeas corpus.

The record in this case shows, and it is admitted by the State, that the plaintiff is quiet and cooperative. He is confined in the penitentiary now, serving time under a sentence that was and is a nullity. The State of Nebraska has provided that a man in the circumstances that prevailed when this plaintiff was sentenced could not be sentenced. Those facts are admitted by the State of Nebraska in their motion to quash. A ten year sentence for an alleged theft of a small bag of chicken feed on its face shows prejudice and bias. The punishment is cruel and unusual and under the Constitution of the State of Nebraska, as well as the Constitution of the United States, and under the statutes of Nebraska plaintiff is clearly eligible to bail. Fortunately, his devoted wife is able to give a reasonable bail. Counsel needs the assistance of the plaintiff while he is preparing his case on appeal, so plaintiff appeals to this court, in the name of humanity, fairness, and justice, to set the amount of bail and permit the plaintiff to give a bail bond. No one can lose, no one can be harmed. The sentence may stop running, but unless plaintiff gains his final freedom on his application for a writ, he will have to serve any time that is involved in a suspension of the sentence.

The State of Nebraska has permitted the record and the exhibits in this case to be destroyed, thus making

it impossible for the petitioner to present his case on the record as required in all appeals of this nature. If petitioner had the original record to present to this court at this time, it would clearly establish that the petitioner was not guilty of the original crime of burglary as charged by the State of Nebraska. It would clearly establish that petitioner is a lifelong farmer who has accumulated, or helped to accumlate with his wife, two farms in the state of Nebraska, and that the petitioner has always been an industrious, hard-working and capable farmer.

Petitioner never committed a crime of violence in his life. He was charged with a crime equivalent to petty larceny, and for that crime he has been held in the penitentiary of the State of Nebraska for more than five years, four years on one charge, and the start of a ten year sentence on another charge.

Petitioner's devoted wife has stood loyally by his side, and is entitled to have petitioner released from the penitentiary so that he can return to the farm and resume his work and his life where he left off when he was convicted of taking what is actually, literally, a small sack of chicken feed.

We pray and plead with this court to be merciful to this good man and let him return to his wife and family, to his farm, and to his work.

Respectfully submitted,

CHARLES SEDLACEK,
Per Se.

CERTIORARI DENIED